BOMBAY ACT No. XII OF 1866.

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SCHEDULE.

BOMBAY ACT No. XII OF 1866.[1]

[*11th July, 1866.*]

An Act to declare the constitution of Courts of Civil and Criminal Judicature in the Province of Sindh.

Preamble. WHEREAS it is expedient to declare by law the constitution of the Courts of civil and criminal judicature in the Province of Sindh, and to provide for

[1] For Statement of Objects and Reasons, *see* Bombay Government Gazette, 1864, Supplement, p. 9; for Report of the Select Committee, *see ibid*, p. 537, and *ibid*, 1866, p. 337, and for Proceedings in Council, *see ibid*, 1864, p. 267, and *ibid*, 1866, pp. 315 and 371.

the due administration of justice therein; It is declared and enacted as follows:—

Court of the Judicial Commissioner.

[1]1. There shall be for the Province of Sind a Court of the Judicial Commissioner of Sindh (hereinafter called the Court of the Judicial Commissioner) which shall be the highest Court of appeal in civil and criminal matters in the said Province and which shall be the District Court and Court of Session of Karachi. The Court of the Judicial Commissioner shall consist of three or, with the sanction of the Government of India, more Judges, one of whom shall be the Judicial Commissioner of Sindh (hereinafter called the Judicial Commissioner) and the others Additional Judicial Commissioners. One of the Additional Judicial Commissioners shall be a barrister of not less than five years' standing. All Regulations, Acts, notifications and rules now in force and applying to the Sadr Court of Sindh shall, so far as they are not inconsistent with this Act or with any notifications or rules hereafter duly published or made, be deemed to apply also to the Court of the Judicial Commissioner.

Jurisdiction of Judicial Commissioner.

[1]1A. The Judicial Commissioner and Additional Judicial Commissioners shall be appointed by the Local Government, by whom alone they shall be liable to be suspended or removed. They shall, within the District and Sessions Division of Karáchi, each of them exercise all the jurisdiction and have all the powers of a Judge of a District Court and of a Sessions Judge; and all Regulations, Acts, notifications and rules now or hereafter in force and applying to the Judge of the District Court or Sessions Judge of Karáchi shall, so far as they are not inconsistent with this Act or with any notifications or rules hereafter duly published or made, be deemed to apply also to each such Judicial Commissioner and Additional Judicial Commissioner.

District Courts.

2. There shall be in each district in the Province of Sindh a District Court; and [2][save as hereinbefore provided] every such Court shall be presided over by a Judge appointed by the [3] Governor of Bombay in Council, by whom only he shall be liable to be suspended or removed.

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[1] Sections 1 and 1A were substituted by the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.

The original section 1 was as follows:—

"1. There shall be in the Province of Sindh a Sadr Court, which shall be the highest Court of appeal in civil and criminal matters in the said Province, within the meaning of the Codes of Civil and Criminal Procedure. The Sadr Court shall be presided over by a Judge appointed by the Governor of Bombay in Council, and such Judge may also be the Judicial Commissioner of the Province of Sindh."

[2] These words were inserted by s. 3 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.

[3] Local Government(?) *Cf.* s. 9 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. V of this Code.

Jurisdiction of District Court.

3. The District Court shall, within the meaning of the [1] Code of Civil Procedure be the principal Court of original civil jurisdiction in the districts in which it is established, and shall also exercise the jurisdiction vested in the Court of Session by the [2] Code of Criminal Procedure or by any other law for the time being in force in the Province of Sindh. VIII of 1859. XXV of 1861.

Subordinate Civil Courts.

4. There shall be, in each district in the Province of Sindh, so many subordinate Civil Courts as the [3] Governor of Bombay in Council acting under the general control of the [4] [Government of India] shall from time to time [5] direct.

Every such Court shall be a subordinate Court of original civil jurisdiction within such limits [5] as the Commissioner in Sindh, with the sanction of the [3] Governor of Bombay in Council, shall from time to time determine, and shall be presided over by a Judge appointed by the Commissioner in Sind.

Jurisdiction of subordinate Civil Court.

5. Unless otherwise provided by any law for the time being in force, the jurisdiction of every such subordinate Court shall extend to all suits and proceedings of a civil nature wherein the value or subject-matter of the claim shall not exceed five thousand rupees.

Regular appeals to Sadr Court.

6. A regular appeal shall lie from the decisions of the Judge of a District Court in the exercise of his original civil jurisdiction to the [6] [Court of the Judicial Commissioner] whenever such appeal is allowable under the [1] Code of Civil Procedure or under any other law for the time being in force in the Province of Sindh. VIII of 1859.

7. [*Applications may be forwarded to Sadr Court by post.*] *Rep.* [7]*Bom. Act I of 1906.*

Regular appeals to District Court.

8. A regular appeal shall lie from the decisions of the Judge of a subordinate Court to the District Court of the district within which such subordinate Court is situated, whenever such appeal is allowable under the [1] Code of Civil Procedure or under any other law for the time being in force in the Province of Sindh. VIII of 1859.

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[1] *See* now Act 14 of 1882, as modified up to 1st December, 1899.
[2] *See* now Act 5 of 1898, as modified up to 1st April, 1903.
[3] Local Government (?) *Cf.* s. 9 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.
[4] The words "Government of India" were substituted for the words "Governor General of India in Council" by s. 9 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.
[5] *See* Bombay Local Rules and Orders, Ed. 1898, Vol. II, p. 489.
[6] The words "Court of the Judicial Commissioner" were substituted for the words "Sadr Court" by s. 9 (*2*) of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.
[7] Vol. IV of this Code.

Suspension and removal of subordinate Judges.

[1]**9.** (*1*) It shall be competent to the Commissioner in Sindh to suspend or to remove from office for misbehaviour or neglect of duty any Judge of a subordinate Court.

(*2*) It shall be competent to the Court of the Judicial Commissioner to suspend from office any Judge of a subordinate Court pending enquiry into his conduct.

(*3*) Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any subordinate Judge under his control. But whenever the District Judge suspends any such subordinate Judge, he shall forthwith report the case to the Court of the Judicial Commissioner.

Rules.

[2]**9A.** In addition to any other powers to make rules expressly or by implication conferred by this or any other Act, the Court of the Judicial Commissioner may, with the sanction of the Local Government, from time to time, make rules consistent with this Act and any other enactment for the time being in force—

(*a*) for the exercise by one or more of the Judges of the said Court of the original and appellate jurisdiction vested in such Court:

Provided that all appellate or revisional jurisdiction other than that of a District or Sessions Court shall be exercised by a Bench of not less than two Judges;

(*b*) for the distribution of the civil and criminal business of the said Court; and

(*c*) for the determination of the holidays and vacations of the said Court.

Disposal of civil appeals.

V of 1882.

[2]**9B.** Section 575 of the Code of Civil Procedure shall not apply to the Court of the Judicial Commissioner. In that Court where any appeal is heard by a Bench of two or more Judges the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that where the Bench hearing the appeal is composed of two Judges and the Judges composing the Bench differ in opinion as to the

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[1] Substituted for the original section by the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code. The original section was as follows:—

"It shall be competent to the Sadr Court to suspend or to remove from office, for misbehaviour or neglect of duty, any Judge of a Subordinate Court."

[2] Ss. 9A to 9E were inserted by s. 6 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.

decision then the appeal may, in the discretion of the Judicial Commissioner, be either referred to a third Judge or re-heard by a Bench of at least three Judges; where the appeal is so referred or re-heard, it shall be decided according to the opinion of the majority (if any) of the Judges who have heard it, or, where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

Disposal of criminal appeals.

[1] **9C.** Sections 378 and 429 of the [2] Code of Criminal Procedure, 1898, shall not apply to the Court of the Judicial Commissioner. In that Court in a criminal matter where any appeal or any case submitted under section 374 of the [2] Code of Criminal Procedure, 1898, is heard by a Bench of two Judges the appeal or case shall be decided in accordance with the opinion of such Judges, but where they differ the appeal or case shall, in the discretion of the Judicial Commissioner, be either referred to a third Judge and decided according to his opinion or re-heard by a Bench consisting of three Judges and decided according to the opinion of the majority of such Judges. V of 1898. V of 1898

When Judge of Judicial Commissioner's Court may try appeals against orders passed by himself.

[1] **9D.** A Judge of the Court of the Judicial Commissioner shall, when sitting in a Bench of three or more Judges of that Court as provided in section 9B or section 9C, but not otherwise, be competent to try any appeal against a judgment, decree or order passed by himself whether in a civil or criminal matter and to adjudicate upon any proceeding connected with, or arising out of, such judgment, decree or order, notwithstanding, anything contained in section 556 of the [2] Code of Criminal Procedure, 1898. V of 1898.

Recording evidence of Judicial Commissioner's Court.

[1] **9E.** The Court of the Judicial Commissioner shall record evidence in such manner as it, by rule, with the sanction of the Local Government, from time to time directs. Section 182 of the [3] Code of Civil Procedure and section 356 of the [2] Code of Criminal Procedure, 1898, shall not apply to any proceedings in such Court after such rule has been sanctioned. XIV of 1882. V of 1898.

Appointment and removal of Court officials.

10. It shall be lawful for the Judicial Commissioner to appoint to the Court of the Judicial Commissioner and to the subordinate Courts of the district of Karachi, and for the Judge of a District Court of any other district, to appoint to such Court, and to the Subordinate Courts of that district, so

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[1] *See* second footnote on page 461, *supra*.
[2] *See* the reprint as modified up to 1st April, 1903.
[3] *See* the reprint as modified up to 1st December, 1899.
[4] Section 10 was substituted by the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code. The original section was as follows:—
"It shall be lawful for the Judge of the Sadr Court to appoint to such Court, and for the Judge of a District Court to appoint to such Court and to the subordinate Courts of that District, so many and such officers as the Governor of Bombay in Council, acting under the general control of the Governor General of India in Council, shall from time to time direct, and, for misbehaviour or neglect of duty, to suspend or remove any such officer; provided that no officer who is in receipt of a monthly salary amounting to thirty rupees shall be removed without the sanction of the Sadr Court; and provided also that all bailiffs, messengers, peons and ministerial servants of a subordinate Court, who receive a monthly salary not exceeding ten rupees, shall be appointed by the Judge of such Court, by whom also they may be suspended or removed."

many and such officers as the Local Government, acting under the general control of the Government of India, shall from time to time direct, and, for misbehaviour or neglect of duty, to suspend or remove any such officer:

Provided that no officer who is in receipt of a monthly salary amounting to thirty rupees shall be removed without the sanction of the Judicial Commissioner: and

Provided also that all messengers, peons and ministerial servants of a subordinate Court may be appointed by the Judge of such Court, and that al bailiffs, messengers, peons, and ministerial servants of a subordinate Court may be suspended or removed by the Judge of such Court, subject to appeal to the Judicial Commissioner in the case of the district of Karachi and to the Judge of the District Court in the case of any other district.

Seal.

11. Every Court shall use a seal on which shall be engraved the title of such Court.

Certain laws extended to Sindh.

12. The provisions of [1]Regulation VIII of 1827 of the Bombay Code (*A Regulation to provide for the formal recognition of heirs, executors and administrators, and for the appointment of administrators and managers of property by the Courts*), and of [2] Act XIX of 1841 (*An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions*), [3]* * * * * are hereby extended to the Province of Sindh.

13, 14. [*Affidavits and affirmations.*] *Rep. Act XVI of 1895.*

Execution of decrees for debt against certain privileged persons.

15. No decree for payment of debt passed by any Court shall be executed against a defendant who is one of the persons mentioned in the schedule [4] * * except in such manner as shall be directed in a special order by the Commissioner in Sindh, to whom a copy of the decree and of the application for execution shall be forwarded by the Court in which such application is presented.

Control.

[5]**15A.** (*1*) The Court of the Judicial Commissioner shall have general control over all Courts which may be subject to its appellate jurisdiction, and may, with the sanction of the Local Government, make rules for the

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[1] Vol. I of this Code, p. 6.

[2] General Acts, Vol. I, p. 34.

[3] The words and figures "and so much as is now unrepealed of Act V of 1840 (*An Act concerning the Oaths and Declarations of Hindoos and Mahomedans*)" were repealed by the Repealing Act, 1873 (12 of 1873).

[4] The words "annexed to this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B. This Schedule has been printed as an Appendix to the Bombay General Clauses Act, 1904, (Bom. Act 1 of 1904), Vol. IV of this Code.

[5] Inserted by s. 8 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906). Vol. IV of this Code.

supervision of the working of such Courts and for their visitation and inspection.

(*2*) The Court of the Judicial Commissioner may, with similar sanction make rules for the due exercise by the District Judges of the general control vested in them over all Civil Courts within their respective districts and for the visitation and inspection of such Courts by the District Judges or their assistants.

Power to make rules for admission and removal of pleaders; to remove and suspend them.

16. It shall be competent to the [1][Court of the Judicial Commissioner] with the sanction of the [2] Governor of Bombay in Council, to make [3] rules for the qualification and admission of proper persons to be pleaders in any Court in the Province of Sindh;

and it shall also be competent to the [1][Court of the Judicial Commissioner] to remove or to suspend from practice, for misbehaviour, any person so admitted to be a pleader.

Publication of rules.

The rules made and sanctioned under this section shall be published in the Government Gazette.

Sadr Court to prescribe fees.

17. The [1][Court of the Judicial Commissioner] shall from time to time prescribe and regulate the fees to be taken for any process issued by any Court the constitution of which is declared by this Act, or by any officer of any such Court, and also the fees which shall be payable in any suit or proceeding in any such Court by any party to such suit or proceeding in respect of the fees of the pleader of any other party to such suit or proceeding.

Publication of table of fees.

Tables [3] of the fees so prescribed shall be published in the Government Gazette.

18 to 20.—[*Validation and indemnification; cessation of jurisdiction.*] *Rep. Act XII of 1873.*

Certain places excepted from operation of Act.

21. Nothing contained in this Act shall be construed to apply to that portion of the Province of Sindh which is now in charge of the Political Superintendent of Thar and Parkar; but all existing rules for the administration of justice in that portion of the said Province shall continue in force in the same manner as if this Act had not been passed:

Extension

[4] Provided that the Local Government may, by an order to be published

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[1] The words "Court of the Judicial Commissioner" were substituted for the words "Sadr Court" by s. 9 (*2*) of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.

[2] Local Government (?) *Cf.* s. 9 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code.

[3] *See* Bombay Local Rules and Orders, Ed. 1898, Vol. II, pp. liii and liv.

[4] This proviso was substituted by s. 10 of the Sindh Courts Amendment Act, 1906 (Bom. Act 1 of 1906), Vol. IV of this Code. The original proviso was as follows :—

"Provided that all or any of the provisions of this Act may, by an order of the Governor of Bombay in Council, to be published in the Government Gazette, be extended to the whole or to any part of the said portion of the Province of Sindh."

in the *Bombay Government Gazette*, alter or rescind any such rules or [1]extend all or any of the provisions of the Act to the whole or to any part of the said portion of the Province of Sindh. of Act to such places.

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[2]SCHEDULE.

(*Referred to in section 15.*)

1. His Highness Mír Hussain Alí Khán.
2. His Highness Mír Hassan Alí Khán.
3. His Highness Mír Sher Muhammad Khán.
4. His Highness Mír Imám Baksh Khán.
5. His Highness Mír Alí Madád Khán.
6. His Highness Mír Muhammad Khán.
7. His Highness Mír Shah Nawáz Khán.
8. His Highness Mír Abdul Hussain Khán.
9. His Highness Mír Shah Muhammad Khán.
10. His Highness Mír Khán Muhammad Khán.
11. Widow of H. H. Mír Núr Muhammad Khán, daughter of H. H. Mír Fateh Alí Khán.
12. Widow (second wife) of H. H. Mír Mír Muhammad Khán, daughter of H. H. Mír Fateh Alí Khán.
13. Wife of H. H. Mír Hussain Alí Khán, daughter of H. H. Mír Nasír Khán.
14. Wife of H. H. Mír Hassan Alí Khán, daughter of H. H. Mír Núr Muhammad Khán.
15. Wife of H. H. Mír Muhammad Khán, daughter of H. H. Mír Sobdár Khán.
16. Daughter of H. H. Mír Murád Alí Khán.
17. Widow of Mír Abdula Khán, daughter of H. H. Mír Núr Muhammad Khán.

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[1] *See* Bombay Local Rules and Orders, Ed. 1898, Vol. II, pp. LIII and LIV.

[2] This schedule was substituted for the original schedule by Bom. Act 3 of 1868, s. 1, *infra*, p. 49. For power to amend the schedule by notification, *see* s. 2 of that Act, *infra*, p. 493.

The following persons were mentioned in the original schedule:

(1) His Highness Meer Hussein Alí Khán.
(2) His Highness Meer Hassan Alí Khán.
(3) His Highness Meer Abdool Hussein.
(4) His Highness Meer Mahomed Khán.
(5) His Highness Meer Shah Nawáz.
(6) His Highness Meer Mahomed Hassan.
(7) His Highness Meer Shere Mahomed.
(8) His Highness Meer Shah Mahomed.
(9) His Highness Meer Khán Mahomed.

18. Widow (third wife) of H. H. Mír Murád Alí Khán, daughter of Mubárak Khán Bhurgarí.
19. Widow (second wife) of H. H. Mír Núr Muhammad Khán, daughter of Malik Sobdár Numriya.
20. Widow (third wife) of H. H. Mír Kuram Alí Khán, daughter of Malik Ahmad Khán Numriya.
21. Mír Walimahomed Khán.[1]
22. Mír Ghulam Hyder Khán *valad* Mír Mahomed Khán.[2]
23. Mír Najaf Alí Khán *valad* Mír Alí Akbar Khán, Talpur.[2]
24. Mír Rustom Khán II, son of H. H. Mír Imámbux Khán, Talpur.[3]
25. Bibi Hawa, widow of H. H. Mír Shah Nawáz Khán.[4]
26. Bibi Sami, eldest daughter of H. H. Mír Shah Nawáz Khán.[4]
27. Bibi Dhayani, third daughter of H. H. Mír Shah Nawáz Khan.[4]
28. Mír Ghulam Alí Khán, the eldest son of Mír Ghulam Shah Khán.[4]
29. Ghulam Shah Khán.[4]
30. Mír Fazal Hussain Khán, son of Mír Sohab Khán, the second son of H. H. Mír Muhammad Hussain Khán.[4]
31. Bibi Chanan, the senior widow of Mír Alí Hyder Khán, the grandson of H. H. the late Mír Mubárak Khán.[4]

BOMBAY ACT No. XIII OF 1866.[5]

[*15th November, 1866.*]

An Act to provide for the Attendance and Examination of Witnesses before the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations.

Preamble. WHEREAS it is expedient to make provision for the attendance of witnesses before the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations and for the examination of such witnesses; It is enacted as follows:—

Governor may 1. It shall be lawful for the Governor of Bombay, by a summons under

[1] This name was added by Notification under the powers conferred by s. 2, Bom. Act 3 of 1868, *infra*, p. 49, *see* Bombay Government Gazette, 1895, Pt. I, p. 635.
[2] *Ibid*, 1896, Pt. I, pp. 355 and 1334.
[3] *Ibid*, 1897, Pt. I, p. 1885.
[4] *Ibid*, 1898, Pt. I, p. 644, and *ibid*, 1899, pp. 72 and 355, respectively.
[5] For Statement of Objects and Reasons, *see* Bombay Government Gazette, Supplement, 1866, p. 388, and for Proceedings in Council, *see ibid*, pp. 400, 409 and 415.
Bom. Act 13 of 1866 has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, p. 467, to be in force in the Province of Sindh, *see* Appendix to Vol. I of this Code, p. 331.